

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANTHONY BROOKS,

Defendant-Appellant.

UNPUBLISHED

July 10, 2001

No. 232545

Tuscola Circuit Court

LC Nos. 98-007420-FC

98-007421-FC

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Defendant pleaded guilty of three counts of criminal sexual conduct in the second degree (CSC II), MCL 750.520c, in exchange for dismissal of other charges. The victims, defendant's niece and nephew, were under the age of twelve when the incidents occurred. The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10, to three concurrent terms of ten to twenty-two and one-half years in prison. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that his minimum terms of ten years' are disproportionate to his circumstances and those of the offenses. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree. We review a sentence imposed on an habitual offender for an abuse of discretion. If an habitual offender's underlying criminal history demonstrates that he is unable to conform his conduct to the law, a sentence within the statutory limits does not constitute an abuse of discretion. *People v Hansford (After Remand)*, 454 Mich 320, 323-324, 326; 562 NW2d 460 (1997).

Defendant contends that the guidelines could have been used by the court as a reference point. Further, defendant contends that the trial court did not impose individualized sentences as required, but rather based the sentences on a generalized impression of others who have committed similar offenses.

Defendant's sentence falls within the statutory limits. As defendant acknowledges, sentencing guidelines do not apply to habitual offender sentences, and are not to be considered when fashioning a sentence for an habitual offender. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). We agree with the trial court that defendant has demonstrated that he cannot conform his conduct to the requirements of the law. Defendant had a prior felony

conviction. He committed multiple sexually assaultive offenses against minor members of his family. A review of the sentencing transcript reveals that while the court did make generalized observations concerning persons convicted of sexually assaultive offenses, it also individualized defendant's sentences. Defendant's sentences do not constitute an abuse of discretion.

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy